THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.25271 OF 2005

DATED:13.12.2005

Between:

M.A.Waheed and others

…Petitioners

And

The Municipal Corporation of Hyderabad

Rep. by its Commissioner, CC Buildings,

Tank Bund, Hyderabad and others

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.25271 OF 2005

ORDER:

The petitioners are aggrieved by the construction being made by fifth respondent. Therefore, they seek a Writ of Mandamus declaring the building permission issued by first respondent as illegal and contrary to the guidelines issued in G.O.Ms.No.423, dt.31.7.1998. A consequential direction to the respondents is also sought directing them to stop the construction in the premises bearing No.1-10-174, Begumpet, Hyderabad.

The petitioners are owners of property bearing No.1-10-175 opposite to Hyderabad Public School. On the northern side of the petitioners' premises there exists a Government Degree College for Women in premises No.1-10-174. Alleging that the

fifth respondent is proceeding with the construction without obtaining permission and without leaving necessary set backs as required under Municipal Corporation of Hyderabad Building Bye-Laws, petitioners filed a Writ Petition being W.P.No.21663 of 2004. The same was disposed of by this Court on 5.9.2005. Aggrieved by the same, petitioners filed an appeal being W.A.No.1896 of 2005. By order dt.14.11.2005, this Court dismissed the writ appeal as infructuous giving liberty to the petitioners to seek redressal against grant of permission by the Municipal Corporation of Hyderabad (MCH) to the fifth respondent. Therefore, present Writ Petition is filed.

The grievance of the petitioners is that as per guidelines in G.O.Ms.No.423, dt.31.7.1998, a distance of 6.00 mts. has to be maintained from one building to another building whereas the fifth respondent is making construction without leaving said distance as set back on the northern side of the petitioners' premises. It is also alleged that the MCH has ignored the guidelines and granted building permission which is illegal and arbitrary.

At the stage of admission itself, the fifth respondent filed a detailed counter affidavit, and as directed by this Court, learned Standing Counsel for MCH has produced relevant file for perusal of this Court. The fifth respondent states that the Government of Andhra Pradesh entered into Memorandum of Understanding with Dr.B.R.Ambedkar Open University for construction of Regional Coordination Centre in the premises of Government Degree College for Women so as to enable the girl students to improve their skills. Accordingly, the University has taken up construction in the open land admeasuring 500 Sq.yards in the premises of the college near the right side of main gate. The University has obtained building permission which was granted in accordance with Set Back Rules as per G.O.Ms.No.483, dt.24.8.1998. As a portion of the land was utilized for road widening, the University has left 14' equivalent to 4.35 mts. on the western side, which was permitted by the MCH and therefore there is no violation of Building Bye-Laws or guidelines issued in G.O.Ms.No.423, dt.31.7.1998.

Learned counsel for the petitioners has made elaborate submissions in support of the Writ Petition. He would urge that being institutional building, the fifth respondent has to strictly adhere to the set back prescribed in the statutory rules and if any deviation is permitted, the same would cause prejudice to the petitioners. This submission is refuted by the learned Government Pleader for Higher Education as well as learned Standing Counsel for MCH.

The relevant file from the office of the MCH is placed before this Court. As mentioned above, the petitioner initially filed W.P.No.21663 of 2004. At that stage, the application for building permission submitted by the fifth respondent was pending. The Building Committee, which initially considered the application, noticed that the land of the Government Degree College was affected in the road widening and therefore any construction thereon is entitled for relaxation in accordance with G.O.Ms.No.483, dt.24.8.1998. Having regard to the same, the Building Committee recommended the proposals for grant of relaxation and grant of permission subject to fifth respondent maintaining set backs; 6.00 mts. on the northern side, 2.99 mts. on

the southern side, 0.00 mts. on the eastern side, and 4.83 mts. on the western side. In the counter affidavit of the fifth respondent it is stated that fifth respondent has left 4.83 mts. on the western side, which is permitted set back. A perusal of the file would show that the first respondent has considered different aspects of the matter in detail at various stages while arriving at a decision and all the allegations made by the petitioners have been belied. After perusing the file as well as the counter affidavit filed by the fifth respondent, this Court is convinced that though on the western side set back falls short of prescribed limit, the MCH granted relaxation as per G.O.Ms.No.483, dt.24.8.1998 as is being granted to different land owners whose land is affected in the road widening.

In the result, the Writ Petition is devoid of merit and is accordingly dismissed.

_____

(V.V.S.RAO, J)

13.12.2005

bnr